IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.561/2002

Reserved on.27.4.2007

Decided on.1.6.2007

Smt. Manjeet Mongra **…Petitioner.**

Versus

The Municipal Council, Dalhousie & another **…Respondents**

Coram

The Hon'ble Mr. Rajiv Sharma, J.

Whether approved for reporting ?[1]*.No*

For the petitioner : **Mr. Rahul Mahajan, Advocate**

For the respondent No.1 **Mr. Sandeep Kaushik, Advocate.**

Rajiv Sharma, J.

This petition is directed against the judgment of learned District Judge, Chamba, District Chamba, H.P. dated 20.10.2001.

The brief facts necessary for the adjudication of this petition are that after the receipt of written complaint on 22.10.1999 by respondent-Council, a notice was issued to the petitioner on 11.11.1999 to stop the unauthorized construction forthwith. The petitioner was issued another notice on 6.3.2000 giving him 7 days final opportunity for compliance. In sequel to notice dated 6.3.2000, the petitioner filed the reply and denied the construction of 4th storey. The plea raised by the petitioner in the reply to notice was not accepted by the Engineering Staff. Thereafter the matter was placed before the House of the Council on 13.11.2000 and vide resolution No. 665 fresh report from the Municipal Engineer was sought for. Consequently the matter was placed before the House of the

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***? No

Municipal Council on 8.3.2001 and the report of the Engineering Staff dated 5.3.2001 was that the petitioner was laying RCC slab of 4th storey for which another notice was issued to her on 11.4.2001. When the petitioner did not stop the unauthorized construction, the matter was again put up before the House of Municipal Council on 27.6.2001 and it was resolved by the House of Council that the unauthorized construction of 4th storey raised by the petitioner be demolished. Ultimately, the Executive Officer of the Council ordered the demolition of unauthorized structure of 4th storey vide order dated 5.7.2001. Feeling aggrieved by the issuance of order dated 5.7.2001, the petitioner filed an appeal before the learned District Judge, Chamba on 9.7.2001. The learned District Judge, Chamba has dismissed the appeal on 20.10.2001.

Mr. Rahul Mahajan, Advocate appearing on behalf of the petitioner has strenuously argued that the petitioner has not been served with notices as mentioned in the order dated 5th July, 2001 as well as in the judgment dated 20.10.2001.

Mr. Sandeep Kaushik, Advocate appearing on behalf of respondent-Council has refuted the submissions made by the petitioner.

I have heard the parties and perused the record.

It has come on the record that the petitioner has been served with a notice dated 11.11.1999 and thereafter the second notice was issued to the petitioner on 6.3.2000. The petitioner had though replied notice dated 6.3.2000 but the plea raised by the petitioner was not accepted by the Engineering Staff of the Council. The petitioner despite the issuance of two notices had continued to raise the unauthorized construction which led to the issuance of fresh notice dated 11.4.2000 and ultimately vide its resolution No. 167 (2) dated 27.6.2001 the Council directed the demolition of the unauthorized construction raised by the petitioner. The order dated

5.7.2001 issued by the Executive Officer cannot be faulted with. The petitioner had been afforded reasonable opportunity of being heard to project her case before the authorities. The petitioner had admittedly not sought any permission before raising the structure of 4th storey. The learned District Judge after hearing the parties has passed a well reasoned judgment after taking into consideration the relevant provisions of the H.P. Municipal Act, 1994. There is neither any jurisdictional error nor procedural irregularity in the judgment passed by the learned District Judge, Chamba.

The plea raised by the petitioner that she has been discriminated against is untenable in view of the detailed reply filed by the respondent-Council refuting these submissions. The gist of the submissions of the respondent-Council in the reply is that the compounding has been done only in those cases where the deviation was less than 10%.

The learned District Judge has examined the record and the findings recorded by him will not be interfered with by this Court while exercising the jurisdiction under Article 226/227 of the Constitution of India.

The Hon'ble Supreme Court in ***M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu*** (1999*) 6* SCC 464 has held that the Court should order demolition of such construction even though builder has invested considerable amount. Their Lordships of the Hon'ble Supreme Court have opined as under:

> **"No consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is**

illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles."

The upshot of the above discussion is that the petitioner had raised unauthorized construction without seeking prior permission of the Municipal Council as per the provisions of the H.P. Municipal Act, 1994 and the Building Bye-Laws framed thereunder.

Accordingly the writ petition is dismissed with no order as to costs and the interim order dated 6.5.2002 is vacated

(Rajiv Sharma), Judge

June 1, 2007
Awasthi